

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed June 11, 2010. Claims 36, 38-49, and 73-78 were pending and rejected in view of cited art.¹ Claims 1-35, 37, and 50-72 are cancelled and claims 36, 46-49, 73, and 76 are amended. Claims 36, 38-49, and 73-78 remain pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action. Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

B. REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

The Office Action rejected claims 47-49 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, claims 1 and 47-49 have been amended to particularly point out and distinctly claim the subject matter being claimed. In particular, claim 1 has been amended to cancel the "except for" language to overcome the rejection under § 112, second paragraph.

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

C. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. §102(A/B/E)

The Office Action rejected claims 36, 38, 39, and 44 under 35 U.S.C. § 102(c) as being anticipated by U.S. Patent No. 6,626,919 (*Swanstrom*). Applicants traverse the rejection at least on the grounds that *Swanstrom* fails to disclose each and every element of the rejected claims, as the elements are arranged in the claims.

Claim 36 is directed to an apparatus for facilitating sealing of a puncture formed in a vessel. The apparatus includes an elongate bar and a filament. Claim 36 is amended to clarify that the bar is "a solid piece of uniform material having a first bore extending laterally through the bar." Claim 36 is further amended to clarify that the filament is "slidably removable from the first bore by either retracting the first free end or by retracting the second free end", i.e., that the filament can be removed in either direction. Thus the filament and the first bore are arranged such that the filament can be removed by retracting the first free end or by retracting the second free end.

Swanstrom, in contrast, fails to disclose these aspects of claim 36. The Office Action references Figure 14 as disclosing "a filament (48) having first and second free ends, the filament being slidably disposed through and slidably removable from the first bore" See OA at page 3. Further, the Office Action indicates that "[t]he filament is capable of being slidably removed from the first bore by untying knot (41)" *Id.* Applicants traverse.

In Figure 14, the retaining element 48 "is a wire of thread with a knot 41 at one end." See col. 11, lls. 41-42. The knot 41 "prevents the spring of the clamping element 49 from dislodging from the retaining element 47." See col. 11, lls. 45-47. Further, when considering the reference as a whole, the retaining element 47 disclosed in *Swanstrom* is intended to be used in a locking apparatus "which can effectively secure an implant, such as a stent or stent graft, to a vessel or hollow organ wall." See col. 3, lls. 14-16.

A locking apparatus for securing an implant to a vessel teaches away from a filament that is slidably removable from the first bore, as recited in claim 1. In addition, the knot 41 prevents the filament from being removable as recited in claim 1. More specifically, the knot "prevents the clamping element 49 from dislodging." See col. 11, lls. 45-46.

Because the knot prevents the clamping element from dislodging, there is no disclosure that the retaining element 48 can be removed by retracting the free end of the retaining element. In fact, removing the retaining element renders *Swanstrom* unsatisfactory for its intended

purpose. *Swanstrom* is directed to a locking apparatus to secure an implant to a vessel or hollow organ wall. *See* col. 3, lls. 14-16. Removing the retaining element 48 would effectively prevent the locking apparatus from securing the implant.

In addition, claim 36 recites that the filament can be removed by retracting the first free end or by retracting the second free end. In other words, the filament can be removed by retracting in either direction. In contrast, the knot 41, as disclosed in *Swanstrom*, prevents the retaining element from being retracted in either direction.

For at least these reasons, Applicants respectfully submit that claim 36 is patentable over *Swanstrom*. The dependent claims rejected under § 102 are patentable for at least the same reasons.

II. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 36, 38-40, and 44 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,980,559 (*Bonutti*) in view of U.S. Patent No. 5,810,884 (*Kim*). Claims 41-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bonutti* in view of *Kim* as applied to claim 36, and further in view of U.S. Patent No. 5,411,520 (*Nash*). Claims 45-47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bonutti* in view of *Kim* as applied to claim 36, and further in view of U.S. Patent No. 6,506,197 (*Rollero*). Claims 73-78 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bonutti* in view of U.S. Patent No. 5,814,073 (*Bonutti* 2) and *Kim*.

Applicant traverse these rejections at least on the grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims.

As previously stated, claim 36 is directed to an apparatus for facilitating sealing of a puncture formed in a vessel. Claim 36 has been amended to recited that the bar is “a solid piece of uniform material.” As noted in the Office Action with reference to Figure 9 of *Bonutti*, the anchor disclosed in *Bonutti* includes two different compositions (144, 146). *See* OA at page 4. Thus, this teaching does not disclose a bar of uniform material as recited in claim 36.

In addition, the modification suggested by the Office Action renders *Bonutti* unsatisfactory for its intended purpose. More specifically, *Bonutti* is directed to a suture anchor. A suture anchor is intended to retain sutures in the patient’s body. *Bonutti* discloses, for example, that “sutures may be retained in a patient’s body by anchors which are at least partially

formed of material which absorbs body liquid" and that "sutures may be retained in a patient's body by anchors which are formed of material which expands under the influence of its own natural resilience." See col. 2, lls. 49-61.

Bonutti discloses a suture anchor that absorbs body liquid and expands. As the anchor expands, "an improved mechanical interlock is formed between the anchor and body tissue." See col. 3, lls. 21-23. The "improved interlock enables the anchor 20 to resist large tension forces in a suture 32 without pulling out of body tissue 22." See col. 3, lls. 23-25. These teachings illustrate that the anchor taught by *Bonutti* is intended to retain the sutures within the patient's body. The improved interlock enables the anchor to resist large tension forces in a suture such that the suture is retained in the patient's body.

For at least these reasons, Applicants respectfully submit that *Bonutti* fails to disclose that the bar is "a solid piece of uniform material." *Bonutti* also fails to disclose a filament "disposed through and slidably removable from the first bore by retracting the first free end or by retracting the second free end" as recited in claim 36.

Independent claims 73 and 76 have at least some generally similar elements and are patentable for at least the same reasons and because *Kim*, *Nash*, *Rollero*, and *Bonutti* 2, alone or in combination, have not been shown to remedy the deficiencies of *Bonutti*.

The dependent claims rejected under § 103 are patentable for at least the same reasons.

D. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner

finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 9th day of September, 2010.

Respectfully submitted,

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